

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

VIVIAN BURNS,

Plaintiff,

Case No. C20-1555RSM

V.

INTERNATIONAL BUSINESS MACHINES CORPORATION,

**ORDER DENYING SECOND
MOTION TO APPOINT COUNSEL**

Defendant.

This matter comes before the Court on the Second Motion to Appoint Counsel filed by Plaintiff Vivian Burns. Dkt. #58. The Court has previously denied a request for counsel in this case. Dkt. #14. The Court has subsequently dismissed all of Plaintiff's claims and closed this case. Dkt. #49. Plaintiff's Motion for a new trial and for relief under Rules 59 and 60 was denied. Dkt. #57. The Court has determined that it can rule on this Motion without waiting for a response brief.

In civil cases, the appointment of counsel to a *pro se* litigant “is a privilege and not a right.” *United States ex. Rel. Gardner v. Madden*, 352 F.2d 792, 793 (9th Cir. 1965) (citation omitted). “Appointment of counsel should be allowed only in exceptional cases.” *Id.* (citing *Weller v. Dickson*, 314 F.2d 598 (9th Cir. 1963)). A court must consider together “both the

1 likelihood of success on the merits and the ability of the petitioner to articulate his claims *pro se*
2 in light of the complexity of the legal issues involved.” *Weygandt v. Look*, 718 F.2d 952, 954
3 (9th Cir. 1983). In “exceptional circumstances,” a district court may appoint counsel for indigent
4 civil litigants. 28 U.S.C. § 1915(e)(1); *Rand v. Rowland*, 113 F.3d 1520, 1525 (9th Cir. 1997),
5 *overruled on other grounds*, 154 F.3d 952 (9th Cir. 1998).

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7 Ms. Burns has failed to set forth exceptional circumstances warranting the appointment
8 of counsel. Because this case is closed, appointed counsel could not help her further litigate this
9 case. Given all of the above, this Motion will be denied. The Court will not consider further
10 memoranda or declarations filed in this case that attempt to argue the merits of her dismissed
11 claims.

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13 Having considered the briefing and the remainder of the record, the Court finds and
14 ORDERS that Plaintiff’s Motion, Dkt. #58, is DENIED. The Clerk shall send a copy of this
15 Order to Plaintiff at 10605 SE 240TH ST #344 KENT, WA 98031.

16 DATED this 25th day of January, 2022.
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21 RICARDO S. MARTINEZ
22 CHIEF UNITED STATES DISTRICT JUDGE
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